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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re C.C., et al., Persons Coming Under  
the Juvenile Court Law.

B252928  
(Los Angeles County Super. Ct.  
No. CK56475)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

K.C.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County, Zeke Zeidler, Judge. Affirmed.

Janette Freeman Cochran, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, Dawyn Harrison, Assistant County Counsel, and Kimberly Roura, Deputy County Counsel, for Plaintiff and Respondent.

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K.C. (mother) appeals from a dependency court order awarding custody of her children C.C., C.F., and J.F. to their presumed father Mark F. (father), with monitored visitation for mother, and terminating jurisdiction. Mother contends the court abused its discretion because the court should have retained jurisdiction to supervise her visitation and provide reunification services. We hold there was no abuse of discretion, and therefore, we affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

Mother and father married in 1996, but were unable to live together until 1999. At the time of the dependency proceedings C.C. was 16 years old, C.F. was 13 years old, and J.F. was 8 years old. Mother and father separated in 2008, and shared joint legal custody of C.F. and J.F. under a family law court order.

On June 14, 2013, mother shoplifted while J.F. and a cousin were in her care. Driving away from the store, she hit a car and pole. J.F.'s face was injured, but mother did not obtain medical attention for her. Mother was charged with a hit-and-run, and driving on a suspended or revoked license.

On June 19, 2013, the Department of Children and Family Services (Department) filed a petition alleging that the court had jurisdiction over the children pursuant to Welfare and Institutions Code section 300,<sup>1</sup> subds. (b)<sup>2</sup> and (j).<sup>3</sup>

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code, unless otherwise stated.

<sup>2</sup> Section 300, subdivision (b) provides that a child is within the court's jurisdiction if "[t]he child has suffered or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to

A detention hearing was held on June 19, 2013. The court found father to be the presumed father of C.F. and J.F. The court released C.F. and J.F. to father and ordered C.C. detained in father's custody. Mother was granted monitored visits.

On August 14, 2013, the court determined father to be the presumed father of C.C. Father requested jurisdiction be terminated. The court ordered the Department to provide mother with referrals for parenting and individual counseling, refer the family to family preservation services, and address the possibility of closing the case with a custody order. It further ordered monitored visitation for mother at least once per week for one hour.

Mother had the possibility of unmonitored visitation if she demonstrated substantial progress with her case plan, which included on demand consecutive drug testing, mental health counseling, a psychiatric evaluation, reevaluation of mother's current prescribed medications, parenting classes, and individual counseling to address case issues. One of her monitored visits was cut short because the monitor suspected mother was under the influence of drugs.

In October 2013, mother waived her trial right and the court sustained the petition. The Department reported that father was making good progress adjusting to caring for the children full-time, and the children were stable in his home. Family preservation services were adding to father's stress level because he had many responsibilities related to his employment and the children. The Department recommended that the court close the case with a family law order providing full physical and legal custody of the children to father.

Mother missed three appointments for drug testing. On the fourth appointment, mother was unable to submit to testing because the information in her file was incorrect.

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provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse."

<sup>3</sup> Section 300, subdivision (j) provides that a child is within the court's jurisdiction if "[t]he child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions."

At a hearing on December 5, 2013, the court found by clear and convincing evidence there would be a high risk of substantial danger to the children's physical health, safety, protection, or physical or emotional well-being if the children remained in mother's home. Mother and the children requested reunification services be provided to mother. The court denied reunification services for mother because the children were safely in the care of father, and mother could continue monitored visitation as arranged between the parents. To obtain unmonitored visits, the court noted mother could complete the items listed in the proposed case plan lodged with the court. The court placed the children in father's home under supervision of the Department and terminated jurisdiction. Mother filed a timely notice of appeal.

## **DISCUSSION**

### **Standard of Review**

We review a dependency court's decision to terminate jurisdiction and issue an exit order and visitation orders for abuse of discretion. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.) When a determination is "committed to the sound discretion of the juvenile court, . . . the trial court's ruling should not be disturbed on appeal unless an abuse of discretion is clearly established. [Citations.] As one court has stated, when a court has made a custody determination in a dependency proceeding, "a reviewing court will not disturb that decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations]." [Citations.] And we have recently warned: "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." [Citations.]" (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) Where substantial evidence supports the order, there is no abuse of discretion. (*In re Daniel C.H.* (1990) 220 Cal.App.3d 814, 839.)

## **Welfare and Institutions Code Section 361.2**

Mother contends the court abused its discretion under section 361.2, because the court should have retained jurisdiction to supervise her case plan, including visitation, and ordered reunification services. We disagree.

Under section 361.2, subdivision (a), once a child is declared a dependent of the court, “the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.”<sup>4</sup>

In a proceeding where a child has been removed from one parent’s custody and placed with the other parent, the court determines whether supervision is still necessary before terminating jurisdiction. (*In re Sarah M.* (1991) 233 Cal.App.3d 1486, 1498, disapproved on another ground in *In re Chantal S.* (1996) 13 Cal.4th 196.) If not, the court grants legal and physical custody to that parent, may provide reasonable visitation by the noncustodial parent, and terminates jurisdiction over the child. (§ 361.2, subd. (b)(1).)

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<sup>4</sup> “[N]oncustodial’ is often used as a shorthand term for ‘a parent of the child, with whom the child was not residing.’” (*In re Catherine H.* (2002) 102 Cal.App.4th 1284, 1289.) A “noncustodial” parent is defined in the statute as one “with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300.” (§ 361.2, subds. (a) and (e)(1).) Although father had legal and partial physical custody of C.F. and J.F. prior to the filing of the petition, he was a “noncustodial” parent for the purposes of section 361.2 because the children were not residing with him at the time of the incident that led to the filing of the petition. The Department contends father was previously a custodial parent and section 16507, subdivision (b), expressly prohibited the court from ordering reunification services to mother. We do not need to address this issue because even under section 361.2, which applies to previously noncustodial parents, the court’s order must be affirmed.

The court's second option is to order that "the parent assume custody subject to the jurisdiction of the juvenile court and require that a home visit be conducted within three months." (§ 361.2, subd. (b)(2).)

If there is a need for supervision, the court's third option is to order "custody subject to the supervision of the juvenile court" under section 361, subdivision (b)(3). In that case, the court may (1) provide reunification services to the parent from whom the child was removed, (2) provide services solely to the parent assuming physical custody to allow that parent to retain later custody without court supervision, or (3) provide services to both parents and, in a later review hearing under section 366, determine which parent, if either, will have custody of the child. (§ 361.2, subd. (b)(3).)

"Under section 361.2, '[t]he decision whether to provide services and to which parent is discretionary to the court because the child is not out of the home, but in placement with a parent.'" (*In re Pedro Z., Jr.* (2010) 190 Cal. App. 4th 12, 21 (*Pedro Z.*), citing *In re Gabriel L.* (2009) 172 Cal.App.4th 644, 651.) "[T]he juvenile court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accordance with this discretion. [Citation.]" (*In re Corrine W.* (2009) 45 Cal.4th 522, 532, citing *In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104.)

The court found supervision was unnecessary, a finding supported by substantial evidence. The Department stated father was making good progress and the children were stable. Family preservation services were increasing the stress on the household. It is undisputed that father's care of the children did not require further court supervision. Mother contends that the court should have maintained jurisdiction to supervise her monitored visits and the proposed case plan for mother. However, the court is not required to retain jurisdiction where the children have already been placed in the home of a parent. (§ 361.2). Monitored visits can be arranged without court supervision. Mother was given a proposed case plan, and has been referred to service providers so she can fulfill the plan. During the time the court retained jurisdiction, mother failed to submit to a single drug test, and had not yet made progress with her case plan. If mother wishes to

seek a change in the court's order regarding custody, the proper venue is family court. Once she has made substantial progress, she can seek unmonitored visits. Mother was not entitled to family reunification services because the children were placed in the home of the other parent and the decision to order such services is left to the sound discretion of the court pursuant to section 361.2. The court's primary purpose is to protect the children from parental abuse or neglect, not determine matters relating to custody. (§ 300.2.) When the children are no longer at risk of harm because they are safe in one parent's care, the purposes of dependency jurisdiction has been fulfilled. (*Pedro Z.*, *supra*, 190 Cal.App.4th at p. 20.)

### **DISPOSITION**

The order is affirmed.

KRIEGLER, J.

We concur:

TURNER, P. J.

MINK, J.\*

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\* Retired judge of the Los Angeles County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.